EXHIBIT 48

to

Declaration of Kenneth A. Gallo in Support of Defendant's Motion for Reconsideration or, in the Alternative, for Certification of an Interlocutory Appeal

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL ROBOT ANTITRUST LITIGATION	Lead Case No.: 3:21-cv-03825-VC
THIS DOCUMENT RELATES TO: ALL CASES	
SURGICAL INSTRUMENT SERVICE COMPANY, INC., Plaintiff, vs. INTUITIVE SURGICAL, INC., Defendant.	Case No.: 3:21-cv-03496-VC

VIDEO-RECORDED VIRTUAL REMOTE DEPOSITION OF
DAVID FABRICANT

Scottsdale, Arizona
November 8, 2022
10:20 a.m. MST

REPORTED BY:
Janice Gonzales, RPR, CRR
AZ Certified Court
Reporter No. 50844

the commercialization to take an additional year?

A. We would have found something out that had a delay in the product being available for sale and something -- one of the reasons that would cause it -- of that -- of that delay would be the -- would be the 510(k) regulatory requirement.

Q. Okay. Would it also be the other potential risks that are listed here on the bottom of page 2?

A. Those -- those are potential delays to revenue.

Q. Okay. But also -- so when you say -- is that different than the question I'm asking you, I guess? I want to understand your answer.

A. There's time to market and then there's the slope of the revenue. So the first question is when can you get first sale. The second is how quickly are you able to generate sales.

Q. You're saying the regulatory issue was time to market issue?

A. Yes.

Q. Okay. And that for the other potential risks here are all just revenue risks, which are different than time to market?

A. So the 510(k), without it you can't sell

it, so that's time to market. Unwillingness of hospitals. That's the amount of time it would take to get a hospital to do a contract with us relative to the investigation of their existing contracts. We can't do that activity with the hospital until the 510(k) is clear. So we can't engage the hospital, but that would affect the -- that steepness that I was saying of the revenue growth. The next one of Intuitive's reaction is only going to affect the steepness of the revenue growth. Additional cost for R&D remediations. R&D remediations, that would most likely prevent us from being able to sell the device. So that goes with the first one of -- until remediations and the Rebotix product is at the Stryker quality standard, Stryker would not be able to do the promotions or the sales process. So that's time to market, not the steepness of the slope. And then the pricing pressures are just -- would go with the steepness of the slope of the revenue.

Q. Okay. So with regard to revenue risk due to potential reaction of Intuitive -- do you see that line?

A. Yes.

Q. Okay. You see "legal"? It just says, "i.e., legal." Do you see that line? It's not a

Q. And what is the date of that exhibit, if it's in front of you?

A. It is October 19, 2015.

Q. And what does that exhibit tell you about what they told you at the time in terms of whether Rebotix had or had not sought FDA clearance?

THE WITNESS: John, are you pulling that up or no?

MR. DOMINGUEZ: Yeah, I'm on it. I'm on it, yeah.

THE WITNESS: I didn't know if you were going to share it.

MR. DOMINGUEZ: I thought you want me to do that hot key control thing, sure. You want me to show it.

THE WITNESS: Right below the last bullet point, that paragraph.

MR. DOMINGUEZ: Where it says "Raptor submitted"?

THE WITNESS: Yes.

To answer your question, Raptor did submit their 510(k). The FDA had not cleared a remanufacturer -- a reprocessor for a 510(k), and they were issued a deficiency letter that they needed to utilize the rate framework, forcing these devices

for reprocessing. Therefore, the company had indicated that they lack a fundamental understanding of SDD regulatory framework and then had requested to leverage Sustainability Solutions expertise to facilitate the 510(k) clearance.

BY MR. RUBY:

Q. And in what way did they propose to leverage Stryker's regulatory expertise to get Rebotix closer to 510(k) clearance?

A. That was the other document that was referenced, that said that they were at roughly 30 percent to Stryker's standard for being able to go back to the FDA with a response. So they were looking to leverage at Stryker's R&D for testing and regulatory for FDA engagement, and that's why the timeline got pushed out and that's why the cost was shown. The original and then the subsequent -- the updated was the incremental. I think we showed in the exhibit 1.5 million.

Q. Okay. At the time of your first sequence of contacts with Rebotix, what business model did they say that they intended to pursue once they had regulatory clearance?

A. I don't understand what that means.

Q. Did they talk to you that what they

wanted to do was open up a store and sell EndoWrists? Did they want to send a technician to places of business and repair EndoWrists if they needed it? Were they proposing to buy -- in some fashion, buy and sell EndoWrists for the purpose of -- EndoWrists for the purpose of replacing the usage indicator? That's what I mean by the business model. At a high level, what kind of business did they say they wanted to be in?

MR. DOMINGUEZ: Objection to form. Misstates the evidence.

Go ahead.

THE WITNESS: They were going to interact directly with the hospitals to have the used devices shipped to them. They would -- they would issue a repair that was not 510(k) and sent back to the hospital at a discount.

BY MR. RUBY:

Q. And did they tell you what this repair would consist of?

A. Yes.

Q. What was that?

A. There were several components. One was to reset the counter, another was to re-tension the cable. The third was to ensure the functionality of

the distal tip, and the fourth was to resharpen any cutting distal ends. There may have been others, but that's the high level that I recall.

Q. In the first sequence of contacts, did Mr. Papit and/or Mr. Mixner tell you that Rebotix didn't really need 510(k) clearance for the kind of repair service that they wanted to offer?

A. Yes, that's -- that was the difference between Rebotix being -- going as a repair company and Stryker being a reprocessing company that required a 510(k).

Q. I don't understand what you just told me. What does that mean?

A. Rebotix is part of another company, Benjamin Biomedical, that Mr. Mixner owned. That was a repair company. Rebotix provided repair EndoWrists, which was the four, five things I just mentioned, but as a repair device, it did not require a 510(k) from the FDA. Stryker's quality system and regulatory counsel would not let Stryker go forward with this device unless it received a 510(k) from the FDA.

Q. Did you ever explain to Mr. Mixner and/or Mr. Papit why it was that Stryker was not interested in going ahead with them unless 510 clearance was

obtained?

A. Yes.

Q. What did you say to them?

A. I don't recall other -- I don't recall other than our -- we will not go forward unless this is a FDA-cleared device.

Q. Well, did you explain to them whether or not Stryker believed that it was legal to go forward with the business they had in mind without FDA clearance?

A. That, I don't recall, if we gave them any advice on how they wanted to operate Rebotix.

Q. Did you ever discuss with Rebotix, with Mr. Mixner, and/or Mr. Papit what kind of structure there might be to a financial transaction between Stryker and Rebotix if Stryker decided to go ahead with that?

A. Yes.

Q. And what did you say to them about that? What did you tell them?

A. It's the LOI terms -- or IOI terms.

Q. And do you recall in -- approximately what those were?

THE WITNESS: John, if you can pull up document -- or Exhibit 239b, as in boy, and it's the

tried to explain to us that they didn't think it was required under the -- under a repair service.

BY MR. RUBY:

Q. I'm sorry for talking over you. I'll try to slow down.

After they explained to you they thought that 510(k) clearance wasn't required because this was a repair, did you after that explain to them, well -- I'm para- -- these are my words. Did you explain to them, Well, that's your opinion, but there's not going to be a deal with Stryker unless 510 clearance was obtained, or words to that effect?

A. One of the key considerations for -- for Stryker was the 510(k) clearance.

Q. And you told them that?

A. Yes.

Q. Did you ever tell Mr. Papit and/or Mr. Mixner about any opinion that you personally had as to whether the -- what they described as a repair required 510(k) clearance or not?

A. That, I don't recall, if I gave them my opinion.

Q. Did you ever tell them whether or not you agreed with their opinion, that what they were describing as a repair required 510(k) clearance?